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ILLEGAL TRANSACTIONS.

The Indian statute-book contains several provisions dealing with unlawful consideration, among them being S. 23 of the Contract Act, S. 35 of the Specific Relief Act, S. 84 of the Trusts Act and S. 6 (*h*) (2) of the Transfer of Property Act. Alike as regards contract and transfer of property the matter is dealt with in an incomplete fashion and is in great measure left to the department of unwritten law. Take the distinction between illegality apparent on the face of a transaction and an illegal purpose known to one only of the two parties. The distinction is noticed in S. 35 (*b*) of the Specific Relief Act but not in the Contract Act. One has to resort to case-law to learn that the party ignorant of the unlawful object or intention may recover on the contract; in other words, that knowldge of both parties is required in order that the agreement may be void *in toto* and unenforceable by either party. This is illustrated by *Pearce* v. *Brooks*,[1] and the recent case in which the woman for whose benefit the obligation was incurred was the mistress of the defendant and not a prostitute. In the first case the plaintiff succeeded because he was ignorant of the woman's character; in the recent case the landlord knew the relations between the woman and the defendant and therefore, it being held that those relations involved a breach of the law, the action failed. *Cowan* v. *Milbourn*[2] is a case of the same kind. In S. 65 the fact that illegality of object may be non-apparent is indirectly recognized, since there reference is made to agreements discovered to be void, and provision is made for the benefit of the person who, having paid money in ignorance, afterwards discovers the true nature of the agreement. But the section is an incomplete statement of the law. It is not enough for the

1. (1866) L. R. 1 Ex. 213. 2. (1867) L. R. 2 Ex. 230.

plaintiff seeking to recover his money that he should allege that he had paid it innocently; it must also appear that on receiving notice of the illegal purpose he repudiated the transaction at once and did not allow the purpose to be carried into effect. It is only by S. 84 of the Trusts Act relating to property transferred for an illegal purpose that this qualification is introduced. The Contract Act does not in this connection draw the useful and simple distinction which in English law is drawn between an executed and an executory contract. The English law with regard to money may be succinctly stated as follows: Money paid for a future illegal object or upon an illegal executory contract is recoverable. But when the contract has been executed the money is not recoverable unless (*a*) the payment has been made under mistake of fact, or (*b*) has been induced by fraud or undue influence, or (*c*) the payment has been payment under an agreement prohibited by a statute enacted for the protection of a particulal class of persons. See *Harse* v. *Pearl Life Co.*[1] and cases on Money Lenders Act, 1900. As compared with this statement, S. 65 is at once too wide and too narrow; it includes cases in which the illegal purpose has been carried into effect and it excludes cases in which the illegality was at the date of the agreement known to the plaintiff.

Turning now to transfers of property for which provision is made in S. 84 of the Trusts Act and S. 6 of the Transfer of Property Act, we may first observe that in most of the cases (as also in those in which S. 53 of the last mentioned Act is discussed) there was no real transfer. In such cases the illegality of the purpose of the transaction is relevant only as it may form ground for defence against a suit to recover possession of the property. Among cases of this kind are *Bridgman* v. *Green*[2], where the conveyance was executed for the purpose of enabling the grantee to kill game; *Symes* v. *Hughes*[3], where there was a conveyance nominally by way of sale, contrived to defeat creditors, and *Petherperumal* v. *Muniandi*[4], where somewhat similar facts were proved. It may be doubted whether S. 84 of the Trusts Act applies to such transactions since there is no real transfer intended and the owner is, according to the law in India,

1. (1903) 2 K. B. 92.
2. (1755) 2 Ves. Sen. 627.
3. (1870) L. R. of Eq. 475.
4. (1908) 35 I. A. 98: I. L. R. 35 C. 55.

entitled to recover possession because he has never parted with the property. But anyhow the principle embodied in the section applies, and it is clear that the right to recover possession ceases to exist when the unlawful purpose which the parties had in view has been carried into execution. It is permissible to the defendant to set up the illegality, as it is in the case in which, but for the illegality of the transaction, a suit could, under S. 82 of the Trusts Act, be brought against the benamidar—*Sheo Narain* v. *Mata Prasad*[1]: *Petherperumal* v. *Muniandi*[2] may now, for India, be called the leading case on the point decided, the point being that a persistent but unsuccessful attempt to carry the illegal object into effect does not deprive the owner of the right, which he otherwise has, to recover the property which he has nominally transferred to another. *Muthurama* v. *Krishna*,[3] in which the facts were similar, must now probably be regarded as overruled and *Yaramati* v. *Chundru*[4] is shaken.

In the above cases the question arose between the original owner of the property or somebody claiming under him and plaintiff and the benamidar as defendant. In *Sidlingappa* v. *Hirasa*,[5] the position of the parties was reversed—the defendant fearing that his property would be sold at the instance of a judgment-creditor executed a conveyance of it, ostensibly by way of sale, in favour of the plaintiff's father and the fraud had the desired effect. If the nominal vendee had been put in possession and had been made defendant in a suit in ejectment, it is clear, on the cases already cited, that he must have been successful. The maxim *in pari delicto potior est conditio possidentis* would have been relevant. Citing another maxim, "let the estate lie where it falls", the court decided in the plaintiff's favour. In support of this decision, which seems to have been arrived at with some hesitation, *Doe* v. *Roberts*[6] is cited. There a deed of conveyance had been executed in favour of the defendant with a view to giving him the statutory qualification which he did not possess. The transaction involved, as observed by one of the judges, an illegal conspiracy between the

1. (1904) I. L. R. 27 A. 73.
2. (1908) 35 I. A. 98; I. L. R. 35 C. 55.
3. (1905) I. L. R. 29 M. 72.
4. (1897) I. L. R. 20 M 362.
5. (1907) I. L. R. 31 B. 405.
6. (1819) 2 B. & Ald. 367.

plaintiff and the defendant, for a criminal information was pending against the defendant. It was what in India would be called a *benami* transaction. Judgment for the plaintiff was put on the ground that the defendant's deed could not be avoided as on the ground of fraud and that the plaintiff, being privy to the fraud, could not set it up as a cause of action or as a defence. In other words the court held that there was estoppel by deed which could not, in the circumstances, be avoided by the allegation of fraud or unlawful intention. In relying on this case the Bombay Court apparently overlooked the fact that the doctrine of estoppel, so far as it precludes a man from denying his own deed, does not obtain in India (see *Mulji* v. *Nathabhai*[1]). The decision, however, although *Doe* v. *Roberts*[2], may not be safe ground on which to support it, may be put on the ground, equally applicable if the defendant had been plaintiff, that proof of the benami character of the transaction could not be given without disclosing the illegal purpose, and that it was not open to the defendant to adduce such evidence. "No man," as Lord...... said, "shall set up his own iniquity as a defence any more than as a cause of action."

Possibly the afore-cited case of *Sheo Narain* v. *Mata Prasad*[3] may also be put on this ground. In proving that what appears to be a purchase by the defendant for his own benefit is really a benami arrangement, the plaintiff can hardly avoid giving evidence of the circumstances which made it convenient or necessary to conceal the true state of facts.

We come now to the cases in which there is an actual transfer, the consideration or object of which is unlawful. Regarding such cases there is express legislation, for S. 6 (*h*) (2) of the Transfer of Property Act says that no transfer can be made for an unlawful object or consideration. But before dealing with this section and the cases, it is well to note the distinction between 'consideration' and 'condition.' A gift which is otherwise valid is not affected by the addition of an illegal condition; the gift remains good, the condition only fails—

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1. (1890) I. L. R. 15 B. 1.
2. (1819) 2 B & Ald. 367.
3. (1904) I. L. R. 27 A. 23.

see S. 32, Transfer of Property Act; *Ram Sarup* v. *Bela*[1] and *In re Moore*,[2] where the difference is discussed at length in reference to a will. The question to be considered is the question on which the Judicial Committee in *Ram Sarup* v. *Bela*[1] declined to offer an opinion. Assuming that the consideration for the gift made by Captain Hearsey had been immoral, could he on that ground be said not to have, in point of law, parted with the property? In a recent Madras case—*Thasimuthukannu* v. *Shunmugavelu*[3]—this question was discussed, but in a most unsatisfactory way. The point was taken only on second appeal, not in either of the two lower courts; consequently there were no definite findings of fact. On what facts the court proceeded and on what principle the judgment in the plaintiff's favour was given it is not easy to say. The facts seem to be as follows: The plaintiff being enamoured of a girl, apparently a dancing girl, sought to secure her favours by bestowing property on the girl's family. Accordingly he executed an instrument whereby he purported to sell for a price certain property to her sister. Apparently he achieved his object and he co-habited with the girl for a time, for it is said that subsequently she left him. Then he brought a suit to recover his property and he was successful. The point on which the case seems chiefly to have turned was whether it could be distinguished from *Ayerst* v. *Jenkins*[4], on which case the defendants naturally relied. Now in *Ayerst* v. *Jenkins*[4] it will be remembered, *Lord Selborne* had to do with a case in which a widower when contracting an unlawful marriage with the sister of his deceased wife, had made a settlement in her favour, and the question was whether this settlement could be set aside on the ground that the consideration was unlawful. The point decided seems to be that a completed gift, though made for an unlawful consideration, will not be set aside at the instance of the donor; the court will not extend its protection to a person who has himself violated the law. And *Lord Selborne* referred to a question put by *Lord Eldon* whether any case could be found in which property given to a woman for future co-habi-

1. (1883) I. L. R. 6 A. 315 : 11 I. A. 44 2. (1880) 39 Ch. D. 116.
3. (1905) I. L. R. 28 M. 413.
4. (1873) L. R. 16 Eq. 275 cited as authority in DART'S *Vendor and Purchaser*, 920.

tation had been taken out of her hands. The Madras judges, paying slight regard to the observations of *Lord Selborne*, distinguish the case as one in which there was a voluntary gift not as in the case before them—a transaction purporting to be a sale. And it must be admitted that the facts of the two cases are quite different, for in *Ayerst* v. *Jenkins*[1] the unlawful intention was on the side of the settlor only; it was not shown that the settlement was given and accepted as the inducement to the unlawful marriage. *Lord Selborne's* observations, therefore, may not have been strictly necessary; he had other grounds for his decision. Nevertheless his opinion is a weighty one; the absence of any case in which the court has relieved in circumstances such as those assumed by him to exist is of the greatest importance. In the Madras case, apart from the suggestion of undue influence, it is difficult to see what facts there were to entitle the plaintiff to treatment more favourable than that which was extended to the plaintiff in *Ayerst* v. *Jenkins.*[1] It is also difficult to understand how, if that case was rightly decided, the decision in the Bombay case can be supported. If in the latter, where the transaction was benami, the title of the grantee was rightly allowed to prevail against the defendant who, in impeaching it, was driven to set up his own fraud, how can it have been right that the plaintiff in the Madras case, who had actually parted with his property, was allowed to recover it?

It is somewhat remarkable that in neither of these cases is any reference made to S. 6 (*h*) (2) of the Transfer of Property Act. Yet if that section means, as on the face of it it would seem to mean, that a transfer made for an unlawful object or consideration is void, it would have been pertinent in both cases and especially imporant in the Madras case. It would almost seem that the section has been generally overlooked. The meaning of the section, the extent of its intended operation as regards the parties or third persons, the effect of it in relation to the doctrine that forbids any person to allege his own iniquity—all these are questions which have not been discussed in reported cases. Taking the words of the section with the words that follow regarding a person legally disqualified, it may be urged

1. (1873) L. R. 16 Eq 275 cited as authority in DART'S *Vendor and Purchaser*, 920.

that the intention was to declare that no title can pass when the object or consideration is unlawful. If the disqualified transferee can acquire no title, it seems to follow that the transferee in the other case can be in no better plight. But obvious difficulties arise on that construction. First there may be a difficulty about the word "object." What is stated to be a condition attached to a gift may also be the object or purpose of the gift. Then, supposing a purchase of a house for such purposes as approved in *Pearce* v. *Brooks*[1] and the other English cases above cited, the seller may or may not know of the purpose; can he, on discovering it, get the sale set aside? Meanwhile the property may have been sold again to a third person. Does that person also acquire no title? And again the question arises as to how the section is to be worked in connection with the principle that denies the protection of the court to persons who are privy to illegal transactions.

The fact is that the subject of transfers for illegal purposes is much too large and thorny to be dealt with profitably in a single short sentence. It might be difficult to express in an enactment the rules by which courts should be governed in regard to questions connected with illegal transactions, and that may be a reason for avoiding the subject. But half-measures are to be deprecated. It would be better to leave judges unassisted to find such guidance as they can in the law reports than to promulgate a section so meagre and inadequate that they do not even think it worth while to refer to it.

H. H. SHEPHARD.

TRANSLATION
OF
APARARKA'S COMMENTARY ON YAGNAVALKYA.

(*Continued.*)

Sloka III.

Effects not liable to partition.

The author speaks of non-divisible property.

"That which was acquired by oneself without detriment to the paternal estate, that which was given by friends and that which was obtained at the time of marriage; these do not belong to the co-parceners."

118.

1. (1866) L. R. 1 Ex. 213.

Sloka 118. Effects not liable to partition.

Among the brothers who have their wealth undivided, without detriment to the paternal estate, (*i.e.*), without living out of it, that separate property which is acquired by oneself separately, and मैत्रं (*Mitram*) (*i.e.*), that which is obtained from friends, and औद्वाहिकं (*Oudhvâhikam*) (*i.e.*), that which is obtained from (one's) father-in-law and others at the time of marriage—all these do not belong to the co-parceners, *i. e.*, they are not partible. But, it belongs to the acquirer alone.

Manu :—That which is acquired by effort without using the patrimony and that which is gained by him without exertion, he shall not give up if unwilling."

श्रम (*Srama*) *i.e.*, war, agriculture, etc.

ईहा. (*Îhâ*) here means work without exertion.

Katyayana :—That which is obtained along with (at the time of obtaining) a bride of equal class is called कन्यागतं (*Kanyagatham*); that wealth is pure and prescribed by the Smritis as fit for sustenance.

That which comes with the wife at the time of marriage is known as वैवाहिकं (*Vaivahikam*): All that wealth is known to be fit for religious acts." Moreover :

" If one recovers property duly descended but which was subsequently taken away, he need not give it to the rest (rest of the parceners); as also wealth acquired by learning." 119.

That which is descended ftom ancestors downwards, such as lands, gardens, etc., but which had been taken away by strangers and received by one with the permission of coparceners need not be given to them (the co-parceners). Of that which is recovered without their permission, the acquirer should take a fourth. The rest, all, including the redeemer, shall share. So says, Rishyasringa.

If one alone redeems property that has been lost previously that (property) the rest shall share proportionately after giving the redeemer a fourth share.

That which has learning as the cause of acquisition, that too need not be given to the co-parceners.

Manu says :—" Wealth, however, acquired by learning, belongs exclusively to any one of them, who acquired it : so does anything given by a friend, received on account of marriage, or presented as a mark of respect to a guest."[1]

1. Manu, Ch. IX, § 208.

Sloka 118.

Effects not liable to partition.

Katyayana :—" That wealth which is obtained by learning acquired from others when living on others' food (not the family food) is called gains of learning."

भक्तं (*Bhaktham*) *i. e.*, food. "Others" means people other than the father.

" That which is acquired by wager in a controversy in learning is called gains of learning and is not included in partition."

That which is obtained from (one's) pupil, from one being an officiating priest in sacrifices, from an examinership, from settling doubtful questions, from one's scholarship, from discussion and from recitation of Vedas—all these are called gains of learning and are not liable to partition. This rule applies to excess (over and above the equivalent value) acquisitions in fine arts.

That which is acquired by wagering in learning, that which is obtained from a sacrificer (in connection with a sacrifice), that which is got from a pupil—all these are called gains of learning. The rest are common.

That which is obtained by defeating another in learning, with wager as the cause, should be known as gains of learning and is not partible, says Brihaspati.

That which is obtained by wagering in learning, that which is got from a pupil, and that which is obtained as an officiating priest in a sacrifice—all these are gains of learning, says Brighu.

Where a person does a daring act risking (his) life, and the master, pleased with the act, confers a favor, that is wealth obtained by valour.

Vyasa says :—" That which is obtained by learning, valour, and *Saudayika*, (*i.e.*,) what is obtained on the marriage occasion—all these should not be claimed by the coparceners at the time of partition.

Katyayana :—What is ध्वजाहृत *Dwajahritham* (acquired in war) does not become partible. That which is acquired in war after putting the enemy's army to flight at the risk of life for the master's cause, is called *Dwajahritham.*

There is no division of property given by friends, etc., which is acquired without detriment to the patrimony. As to property acquired with its (of the patrimony), use

Vyasa says :—Where one acquires property by his valour, etc., using some common property like chariot, arms, etc., there the brothers become partakers. To him (the acquirers) the two shares must be given. As for the others they become equal sharers.

Katyayana :—To the unlearned need not be given by the learned, the gains of learning, at any time. But to the equals or superiors in learning that wealth (the gains of learning) should be given by the learned.

Sloka 118.

Effects not liable to partition.

Narada :—" A learned man is not bound to give a share of his own (acquired) wealth against his will to an unlearned co-heir unless it has been gained by him using the paternal estate."[1]

" He who protects the family of a person undergoing study, though (himself) unlearned, gets a share in the wealth gained by that study from him (the learned)."[2]

If the eldest acquires wealth after the father's death, the youngers have a share in it if they happen to be studying (at that time).

विद्यानुपालिनः (*Vidyanupalinaha*) means the youngers who are undergoing study. The author (now) speaks of another (kind of) indivisible property.

Manu :—"Apparel, carriages or riding horses, and ornaments (*of ordinary value which any of the heirs had used by consent before partition*), dressed rice, water (*in a well or cistern*), female slaves, family priest or counsellors and cattle-ways, (the wise) have declared indivisible, (and still to be used as before)."[3]

Here (in the above sloka) some commentators are of opinion that by the word पत्र (*patra*) is meant carriages, etc. That is opposed to Katyayana's text, namely :—

" The wealth that is on paper, and that which has been set apart for charity, water, female slaves and royal grants got by inheritance, cloths worn (already), jewels—of these—whatever is not divisible, they should be so disposed of as to admit of use by all on the appropriate occasions.

Cattle-ways—Compound walls, etc., cloths that have been worn and that which should be spent in charity are not divisible—says Brihaspati.

नानुरूपं(*Nanurupam*): (not divisible) means not fit for division, *i.e.*, of a number not evenly distributable among the coparceners : should be made enjoyable in turns according to the number of the coparceners. The non-divisibility of loths, etc., is (with reference to division) in that very shape, but can be divided in value. So says Brihaspati.

" Those by whom clothes and the like articles have been declared indivisible have not decided properly. The wealth of the rich depends on clothes and ornaments."[4]

" (Such wealth) when withheld from partition will yield no profit ; but neither can it be allotted to a single (coparcener).

1. Cf. S. B. E., Vol. 33, 191. Narada, Ch. 13, § 11.

2. S. B. E., Vol. 33, 191. Narada, Ch. 13, § 11.

3. Manu Ch. IX, § 219. The words in brackets are the gloss of Kullakabhatta.

4. S. B. E., Vol. 33, p. 382. Brihaspati, Ch. 25, § 79.

Therefore, it has to be divided with some skill; or else it becomes useless." Sloka 118.

Effects not liable to partition.

Cloths and ornaments are divided by (distributing the proceeds after) sale. A written bond (concerning a debt divided) after realization (of the sum lent); dressed food by an exchange for (an equal amount of) unprepared food.[2]

As for the water in the well or pool it shall be drawn and used by turns, and so embankments and fields also are divisible according to their shares."[3]

" A female slave* who is single should be made to serve (successively) in each house according to the share. If there are many of them they should be distributed equally; and this rule applies to male slaves also.[4]"

That which is obtained from a benefactor should be divided equally. Rights of way too should always be used by coparceners in due proportion to their (several) shares.[5]

* A "female slave" relates to a female slave not enjoyed by any one. As for one who has been enjoyed, Gautama says thus:—
Water, king, priests, etc., dressed food are indivisible: also appropriated woman (slave).

योगक्षेमवतोलाभं (*Yokakshemavatho Labham*) (that which is obtained from a benefactor) *i. e.*, : योगक्षेमवान् (*Yokakshemavan*):— Patrons like kings and others who have been procured by ancestors like the father, etc. for the support of the family. Gains from them means that which is obtained from them. The meaning is that that wealth should be divided equally. प्रचार (*Prachara*) means the way of exit and entrance.

Sankha and Likhita:—" Eating or drinking vessels, jewels, appropriated female slaves and clothes are indivisible: but those used on special occasions are divisible"—says Prajapati.

S. SRINIVASA AIYAR.

(*To be continued.*)

NOTES OF INDIAN CASES.

Velu Tassi Ammal v. Chidambaravelu Pillai.— I. L. R. 33 M. 85.—The ambiguity of the expression " accused person" and " discharged" as used in the various sections of the

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1. Cf. S. B. E., Vol. 33. p. 382, Brishaspati, Ch. 25, § 80.
2. Cf. S. B. E., Vol. 33, p. 382, Brihaspati; Ch. 25, § 81.
3. Cf. S. B. E., Vol. 33, p. 382, Brihaspati, Ch. 25, §§ 82, 84.
4. Cf. S. B. E. Series, Vol. 33, p. 382, Brihaspati, Ch. 25. §§ 82, 83.
5. Cf. S. B. E. Series, Vol. 33, p. 382, Brihaspati, Ch. 25. § 84.

Criminal Procedure Code and the contrariety of decisions as to the meaning of these expressions justify the procedure adopted by his Lordship Mr. Justice *Miller* in deciding this case with reference merely tot he language employed in the several sections of the Code and without reference to the decided cases. It has been held in cases under S. 107 of the Cr. P. C. that no further inquiry might be directed under S. 437 by the District Magistrate—see *Queen-Empress* v. *Imam Mondal* [1], *Dayanath Taluqdar* v. *Emperor*[2], *Queen-Empress* v. *Ahmad Khan*[3]. A different view was taken by *Banerjee* J. in *Queen-Empress* v. *Muthasaddi Lal*[4] and by *Knox* J. in *King-Emperor* v. *Fyaz-ud-din* [5], although in the latter case it was not necessary for the decision. The reasoning adopted by the learned Judge would apply both to a person against whom proceedings are taken under Chapter VIII and to the case of a person accused of an offence, and that apparently seems to be the view of the learned Judge in this case. The learned Judge construes the term "discharged" in S. 437 as equivalent to "discharged" in Ss. 209, 253 and 259.

Kambinayani Javvaji Timmaji Amma Garu *v.* Kambinayani Javvaji Subbaraju Nayanivaru.— I. L. R. 33 M. 473 :—This case raises an important question. *A* obtained a consent decree against *B* for delivery of ⅓rd share of the Zemindari. *A* tried to execute the decree but his application was rejected on the ground that the decree was not executable. *A* appealed to the High Court. Pending appeal *A* died, leaving a widow. The widow was *enceinte* at the time and a daughter was born afterwards. The widow was brought on the record and the High Court held that the decree was executable. The question whether after the death of *A* his widow could execute, was left to be raised separately, and this question was decided both by the first court and the High Court in favor of the widow. *B* filed an appeal to the Privy Council. Pending these proceedings *B* and *A*'s widow entered into a compromise by which the latter released or relinquished her rights and obtained some properties both for herself and her daughter. After the widow's death and long after the execution of the decree became barred by limitation, the daughter, after some

1. (1900) I. L. R. 27 C. 662. 2. (1905) I. L. R. 33 C. 8.
3. (1900) A. W. N. 206 4. (1898) I. L. R. 21 A. 107.
5. (1901) I. L. R. 24 A. 148.

infructuous proceedings to execute the decree, brought a suit to obtain ⅓rd share of the Zemindari awarded by the decree. The defence was that the suit was not maintainable under S. 244, C.P.C. (S. 47, New Code) and was barred by limitation as the adverse possession which had run against the plaintiff's predecessor prior to the decree continued to run notwithstanding the decree. The only answer on behalf of the plaintiff to these pleas was that the compromise by the plaintiff's mother, a limited owner, amounted to an alienation which gave a new cause of action to the plaintiff to bring the suit.

Even supposing that the compromise amounted to an alienation, it would not necessarily give the plaintiff a fresh cause of action to maintain a suit. Where an adjustment is made after decree and that adjustment is repudiated as fraudulent, the proper course for the decree-holder is to execute the decree, setting up the adjustment as fraudulent. Fraud, no doubt, vitiates all transactions, but the appropriate remedy for relief on the ground of fraud depends upon the law of the State. The processual Law of India has declared that questions relating to execution, discharge or satisfaction can only be decided in execution and not otherwise. So also, although, according to Hindu Law, a compromise by a limited owner may not be binding upon the reversioner, the question as to the mode in which relief may be obtained by the reversioner depends not upon the Hindu Law but upon the Statute Law of India. The Civil Procedure Code of India enacts that questions of the nature already referred to can only be decided in execution and not in a fresh suit. The Hindu Law does not say that a fresh suit lies, and even if it has said so, it must be deemed to have been abrogated by the Statute Law. A satisfaction or discharge by a limited owner is not a valid satisfaction or discharge so far as the reversioner is concerned, and the reversioner, by taking proper steps, can have the fruits of the decree obtained by the last owner realized for his benefit. Where the limited owner does not take steps and allows the decree to become barred by limitation, he precludes himself from executing to the prejudice of the reversioner.

SUMMARY OF ENGLISH CASES.

Rex *v.* Crippen. [1911] I. K. B. 149.

Admission—Rebutting evidence after close of defence evidence

The question of admission of rebutting evidence on the part of the prosecution after the close of the defence evidence is entirely in the discretion of the trial judge.

Where the judge at the trial allows such evidence to be given the court of criminal appeal will not quash the conviction unless there was something in the evidence in the nature of a trap which will injure the prisoner.

Moel Tryvan Ship Co., Ltd. *v.* Andrew Weir & Co.

[1910] 2 K. B. 844. (C. A.)

Ship—Charter-party—Construction—Non-arrival in time—Option to cancel contract—Time for.

A charter-party provided that the chartered ship ought to go to a a certain place and there receive a full cargo from the charterers' agents at a specified rate. It contained an option for the charterers to cancel the contract, provided the ship did not arrive at the port named by a certain date. The ship-owners, finding in the middle of their voyage to be unable to reach the port on or before the specified date, gave on that date, being far away from that port, a notice to the charterers' agents, asking them to exercise the option. No option having been exercised the ship went to the place six months after the date fixed for the option, and then called upon the charterers' agents to load the ship. On the charterers' refusal, the ship-owners brought this suit for damages.

Held, that the suit must be dismissed as the charteres were not bound to exercise their option, before the ship arrived, as then alone they could see if it could be to their advantage to accept the contract rates or to cancel the contract.

Metropolitan Water Board *v.* London, Brighton & South Coast Ry. Coy. [1910] 2 K. B. 890 (C. A.).

Water—Supply of, to a Railway platform—Whether for domestic purposes.

Water supplied by a Water Board for a Railway Station for the use of passengers using waiting rooms, water closets and urinals on the platform, is not for "domestic purposes" but for railway purposes, especially where there is a special separate

lavatory for the use of the porters and the staff, and such water must therefore be charged at the special rates mentioned as distinct from those for "domestic purposes."

Jackson v. Rotax Motor and Cycle Coy.

[1910] 2 K. B. 937 (C. A.)

Sale of goods—'When required,' meaning of—'Merchantable', meaning of—Rule of de-minimis—Acceptance of one instalment of consignment—No duty to accept rest, if unmerchantable.

A contract to buy motor horns of different descriptions in prices with a clause "delivery as required" is really not a single indivisible contract for the whole of the goods, which might be ordered, but is a series of contracts, for the amount of the goods of the descriptions at each time they are ordered. So, acceptance of one instalment of a consignment of goods, which are found on opening to be saleable, does not preclude the buyer from rejecting the second instalment, if the goods therein contained are found unsaleable as a whole. In this case, part of the goods found unmerchantable became so owing to bad packing, and the other part owing to want of good polishing. A buyer may be compelled to accept the goods on the rule of *de minimis* if only one or two in a hundred are found unsaleable, but not where, as in this case, nearly half the goods were unmerchantable.

An article is "merchantable" if it is saleable in its existing condition: the fact that a little work such as a little polishing, though at a very trifling cost, is the only thing required in order to make the article saleable will not make it merchantable and the buyer is entitled to reject such goods as unmerchantable.

City of Birmingham Tramways Coy., Ltd. v. Law.

[1910] 2 K. B. 965.

Contract to repair property of a third party—Stipulation for payment of damages in case of negligent repair—Negligent repair and injury—Right of third party to sue.

A Municipality owning a tramway leased the same and its working to the plaintiffs, agreeing to execute repairs whenever necessary but at the cost of the plaintiffs. Repairs having

become necessary the Municipality made a contract with a contractor, which recited the lease with the plaintiffs and its conditions, and under which the contractor agreed to be responsible to the Municipality for all damages which might be caused to the plaintiffs by any negligent execution of the repairs. Repairs having been negligently executed, one of the tram cars was derailed and overturned, with the result that the car, the driver and some of the passengers were injured, for which the plaintiffs had to pay damages to the driver and the passengers. In an action by the plaintiffs against the contractor to recover the damages thus paid and the cost of repairing the tram, the contractor pleaded that the plaintiffs were no party to his contract and that he agreed to indemnify only the Municipality. *Held*, (1) that though the plaintiffs were not parties to the contract, inasmuch as their proprietary rights as lessees and their working rights were prejudiced by the negligent act of the contractor, who would only be a trespasser except for the contract with the Municipality, he was directly liable to the plaintiffs; (2) that it was not the plaintiffs who pleaded the contract to fix the defendant with the liability, but it was the defendant who wanted to take shelter under it to justify his trespass; (3) that he cannot invoke the contract only in so far as it was beneficial to him; and (4) that in all the cases in which third parties were not allowed to take the benefit of the contract, the proprietary rights of such third parties were not affected.

Lees *v.* Dunkerley Brothers. [1911] A. C. 5.

Negligence—Injury to fellow-servant—Defence of common employment.—The defence of common employment does not apply as between fellow-servants one of whom is injured owing to the negligence of another.

Lowery *v.* Walker. [1911] A. C. 10.

Negligence—Savage animal—Liability of owner.

The defendant put his horse, known to him to be savage, in his field which he knew was habitually being used by the people of the neighbourhood as a short cut to a railway station. The plaintiff, one of such people, was attacked and bitten by the horse.

Held—(1) that the plaintiff was lawfully on the field with the permission of the owner, though he had no right of way or express leave to be in that field, inasmuch as the defendant knew that the people were habitually using the way and acquiesced in the same without in any way preventing that user, and (2) that under those circumstances he was under a legal obligation to inform such people of the dangerous character of the animal.

Per *Curiam*:—"Some time after the judge (County Court Judge) delivered the judgment he made an alteration in regard to a phrase (trespasser) he had used. I think it was quite legitimate to do so, because the word he used was capable of being misunderstood, or understood in one sense rather than in another, and I see no objection to his explaining to the court and to the parties the sense in which he used the word."

Owners of Lightship "Comet" *v.* Owners of the "W. H. No. 1." [1911) A. C. 30.

Admiralty—Collision—Tug and tow—Negligence of tug—Non-liability of tow.

A tug was towing a barge which had no motive power of her own in the mouth of a river on a dark night and was navigated in a negligent manner with the result that the barge came into collision with a lightship. In an action by the owners of the lightship against both the tug and the barge :

Held : (Lord *Robson* dissenting) that the barge was not to blame as she was 'entitled to expect that the tug would be reasonably well navigated' and to act upon that belief, and as 'she need not anticipate and act in advance in expectation of a thoroughly bad piece of seamanship on the part of the tug which is towing her.'

McDermott *v.* Owners of S. S. "Tintoretto." [1911] A. C. 35.

Statute—Construction—Plain absurdity—Reading certain words into the statute.

Per Loreburn L.C.—"I feel no hesitation in reading such words (*viz.* that payments are not to overlap) into the statute. The same thing has been done by this House before, notably in interpreting the Succession Duty Act in order to avoid a plain

absurdity. In this case it is necessary, in order to avoid a plain frustration of the obvious intention of the Legislature."

Rex v. William Henry Ball and Edith Lilian Ball.
[1911] A. C. 47.

Evidence—Admissibility of—Incest on particular occasions—Evidence of conduct and relation of the two persons on previous occasions.

As the accused, a brother and sister, were charged of incest in July and September 1910, evidence was tendered to show (1) that there was ample opportunity for this offence, (2) that there were circumstances which, to say the least, were very suggestive of incest ; (3) that these persons lived together and occupied the same bed room and the same bed, and (4) that these persons had previously carnally known each other and had a child in 1908 :

Held—That the evidence was admissible, for the object was to establish that they had a guilty passion towards each other and that therefore the proper inference from their occupying the same bed room and the same bed was an inference of guilt or—which is the same thing in another way—that the defence of innocent living together as brother and sister ought to fail.

The evidence is admissible on the issue that this crime was committed—not to prove the *mens rea*, but to establish the guilty relations between the parties and the existence of sexual passion between them as elements in proving that they had illicit connection in fact on or between the dates charged. Their passion for each other was as much evidence as was their presence together in bed of the fact that when there they had guilty relations with each other.

Standard Ideal Coy v. Standard Sanitary Mfg. Coy. [1911] A. C. 78 (P. C.)

'Carrying on trade'—Meaning of—Trade Mark—Infringement of—'Standard'—Descriptive word—Passing off.

A company, which has its office in a foreign province and directly sends goods by post or otherwise to people who wish to buy them on the solicitation of the company's travelling agents

who pay the price directly to the company, cannot be said to be carrying on trade at the place of such people.

The plaintiff company charged the defendant company with infringement of its trade mark by the use of the word 'standard' and with passing off their goods as and for those of the plaintiffs:

Held, (1) that the word 'standard' was not a valid trade mark; (2) that there being no evidence (*a*) that the word 'standard' had acquired a secondary significance as meaning the goods of the plaintiff's manufacture, (*b*) that any one was deceived or was likely to be deceived by the alleged similarity between the trade designations of the two companies, when each proclaimed in its labels and advertisements its headquarter or place of manufacture, the plaintiff must fail even though the defendant copied some of the plaintiff's designs, patterns, advertisements and photographs as well as the combination of colours in its green and gold labels (this is not an action for infringement of copyright in designs or letter press) and has availed itself unscrupulously, if not unfairly, of the labour, ingenuity and expenditure of the plaintiff company in preparing the ground and educating the public on sanitary questions and up to date articles of toilet use.

The word 'standard' is a common English word. It seems to be used not infrequently by manufacturers and merchants in connexion with the goods they put on the market. So used it has no very precise or definite meaning. But obviously it is intended to convey the notion that the goods in connexion with which it is used are of high class or superior quality or acknowledgment. It cannot be an apt or appropriate instrument for distinguishing the goods of one order from those of another. Distinctiveness is the very essence of a trade mark. The plaintiff was therefore not entitled to register it as a trade mark and it is not a valid trade mark though registered.

Bochm *v.* Goodall. [1911] 1 Ch. 155.

Receiver—Right of indemnity—Limited to assets.

The receiver is an officer of the court and not an agent of the parties. They have no control ever him and are not not liable to indemnify him against liabilities incurred in the carrying on of the business entrusted to him. Persons dealing with him have to look to his personal credit and he in his turn has only

to look to the assets of the concern. His position is not improved because he happens to be appointed by consent of parties. He cannot claim to be subrogated to the rights of the creditors he has paid when he has not paid them at the request of the debtors, express or implied. Such request cannot be implied from the mere fact that he was appointed receiver with the consent of parties.

In re **Coomber: Coomber *v.* Coomber.** [1911] 1 Ch. 174.

Undue influence—Principal and agent—Burden of proof—Discharged by proof of motive of gift, e.g., natural affection and *compliance with husband's wishes.*

When a gift is made to a person standing in a fiduciary relation (as agent), the burden is upon the donee to prove that the gift has not been induced by that relation. This he can do either by showing that the donor has had independent advice in the matter or by showing that the gift was induced entirely by natural affection (the donee in this case being the son) and the desire to comply with the wishes of the deceased husband of the donor.

In re **Hoyles: Row *v.* Jagg.** [1911] 1 Ch. 179.

Mortgage—International Law—Moveable and *immoveable, distinction between.*

Mortgage on land is immoveable property to which the *lex loci* applies. A gift in charity of mortgage of land in Ontario which is probitited by the Ontario law is void though made by a domiciled Englishman by a will executed in England. Judgment of *Swinfen Eady* J. in (1910) 2 Ch. 333 affirmed.

Per *Cozens-Hardy* L.J.—The terms "moveable" and "immoveable" are not technical terms in English law though they are often used in considering questions between our law and foreign systems which differ from our law. But where the two systems are identical, I doubt whether the terms are appropriate.

Farwell L.J. :—International law is a matter of international comity. No country can be expected to allow questions affecting its own land or the extent and nature of the intersts in its own land which should be regarded as immovable, to be determined otherwise than by its own courts in accordance with its

own interests * *. The question * * is not so much what are or ought to be deemed, *ex sua natura*, moveables or not, as what are deemed so by the law of the place where they are situated. If they are deemed a part of the land or annexed, as the common law would say, to the soil or freehold, they must be so treated in every place in which any controversy shall arise respecting their nature and character. It is for this court to determine whether mortgages on land are moveables or immoveables, and in order to come to a conclusion, we are bound to consider the result of our decision on the general welfare of the country as shown by our laws, and if a decision in one way will involve results which our law considers prejudicial to the public interest or immoral or the like, it is our duty to decide the other way.

Mathews v. Ruggles Brise. [1911] 1 Ch. 194.

Trustee's right of indemnity—Assignment of the interest of cestui que trust—Right to proceed against the old cestui que trust.

The general rule is that where persons accept a trust at the request of another and that other is the *cestui que trust* he is personally liable to indemnify the trustee for any loss accruing in the due execution of the trust. This right of the trustees to proceed against the *cestui que trust* is not taken away by his assigning their interest to some other person who is recognized by the trustees as the *cestui que trust* in the absence of an express reservation substituting the liability of the new *cestui que trust* for that of the old, though no doubt as between the old *cestui que trust* and the new, the primary liability will fall on the new *cestui que trust.*

Eri County Natural Gas and Fuel Coy., Ltd. v. Samuel S. O'Carrol. [1911] A.C. 105 (P.C.)

Damages—Breach of contract—Measure of damages.

The plaintiffs, a mining company, leased certain gas works to defendants under various conditions one of which was that the defendants should supply the plaintiffs the gas necessary for their works. The defendants having after a time failed to supply gas, the plaintiffs were obliged to erect certain gas works and after having them for 7 years sold them and then sued for damages.

The sale proceeds having exceeded their cost of production: *Held* that the plaintiffs were entitled to only nominal damages.

"The measure of damages is the cost of procuring the substituted article, not at all the price at which the substituted article when procured could have been sold by the person who has procured it. The principle is that if the party does not perform his contract, the other may do so for him, as (reasonably) near as may be, and charge him for the expenses incurred in so doing * * * If in case of a breach of contract to sell goods the purchaser purchases at a sum equal to or less than the contract price he can only recover nominal damages * * * as he has suffered no loss * * * The same rule must apply whether substituted goods are manufactured or mined for or otherwise produced or purchased in open market * * * The method adopted to procure cannot make any difference." * * * What the works cost the plaintiffs they must show. They cannot be permitted to recover damages on guess work or surmise. * * * The contention that as the defendants by their conduct had compelled the plaintiffs to become producers of gas they are bound to pay the latter for their courage and enterprise is without authority. If may well be that if several reasonable but abortive attempts had been made to procure this gas the cost of these would have been properly treated as part of the cost of ultimately obtaining it. The plaintiffs are also bound to show for how much they sold the works.

Bank of Montreal *v.* Jane Jacques Stuart.

[1911] A. C. 120.

Husband and wife—No undue influence—Indebtedness of husband—Wife accommodating husband—No independent advice wife—Interference of husband's solicitor who was also solicitor to husband's creditors—Interest of solicitor.

The plaintiff's husband and his solicitor were principal members in a company whose liability to the defendant bank was increasing from time to time. The solicitor was also a creditor of the company as well as the solicitor to the defendant bank. The plaintiff accommodated her husband, of her own free will, for some time without the intervention of the solicitor and afterwards with his intervention. Finally the wife became

penniless. In a suit to set aside all these transactions with the bank : *Held*: that the plaintiff was entitled to recover for the following reasons: (1) The plaintiff had no independent advice, and was completely under the husband's influence though she denied any such influence. (2) The solicitor was interested personally in advising her to accommodate the husband as he was himself a debtor to the bank and a creditor of the company. (3) The accommodation was procured by the solicitor of the bank who never gave the plaintiff such independent advice as would make her realise her position and the extent of the liabilities which she was incurring. (4) It was the duty of the solicitor under the circumstances to have asked the husband to get independent advice for the wife and if that was an impossibility the solicitor ought to have retired from the business altogether and told the bank why he did so.

Per *Curiam.*—It is not correct to say that "no transaction between husband and wife for the benefit of the husband can be upheld unless the wife is shown to have had independent advice."

The husband's solicitor owed a duty to the wife in transactions between husband and wife where her interests are concerned. It is a sound observation that a wife usually has no solicitor of her own apart from her husband, and I think she is *prima facie* entitled to look to her husband's solicitor—the solicitor of her husband's family—for advice and assistance until that solicitor repudiates the obligation to give such advice and requires her to consult another gentleman.

Munro *v.* Didcott. [1911] A. C. 140 (P. C)

Mining lease—Nature of—Interest in land—Registration, necessity of.

By the law of Natal a lease of land or a conveyance of any interest in land ought to be registered and, unless registered, it would not give any preference over unsecured creditors but would only be operative as a contract between the parties. *Held* that the right given by a mining lease is more than an incorporeal right and is an interest in land, and as such was required to be registered.

Per *Curiam.*—"Although we speak of a mineral lease or a lease of mines, the contract is not in reality a lease at all in the sense in which we speak of an agricultural lease. There is no fruit, that is to say, there is no increase; there is no sowing or reaping in the ordinary sense of the term, and there are are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of land. It is liberty given to a particular individual, for a specific length of time, to go into and under the land and to get certain things there if he can find them and to take them away, just as if he had bought so much of the soil."

The objects of all registration are, among other things, to afford to the public the means of knowing to whom the ownership of the land of a country belongs; what are the interests carved out of it and what are the charges upon and incumbrances affecting it, so that these owners may discharge the liabilities ownership entails, that those who deal with them may be protected; and in many cases that the transfer to others of their proprietary interests may be easily and inexpensively effected. All these considerations apply as directly and forcibly to mining leases as to leases of the surface above the mines, and there does not, therefore, seem to be any reason why the Legislature should necessarily exclude mining leases from the operation of the statute.

JOTTINGS AND CUTTINGS.

The Right to a Poll.—At the recent meeting of the Bar the question was raised whether there were any means of obtaining the feeling of the entire Bar on the question whether the Long Vacation should be abbreviated—something in the nature of a referendum. It is apprehended that the question, as thus put must be answered in the negative—the Common Law knows nothing of a 'referendum.' But there is a Common Law right to a poll, and any voter present, who had the temerity to run against the obvious sense of the meeting, could have demanded a poll. In *The Queen* v. *Wimbledon Local Board*[1], the Court of Appeal laid it down, on the authority of a previous decision of *Lord Stowell*, that the Common Law right to a poll is not confined to meetings called by vestries, but

[1] (1882) L. R. 8 Q. B. D. 459.

that it is an attribute at Common Law of all public meetings that any qualified person may demand a poll, and the meeting may be 'enlarged' so that all persons duly qualified may come in and take part in the decision. 'Both reason and authority,' said *Lord Justice Brett*, 'show that where a large class of persons exist who are qualified to take part in a meeting, an opportunity ought to be given of summoning them, and of allowing them to record their votes.'—*The Law Journal.*

Slander and the Loss of 'Hospitality.'—Our Common Law is notoriously unsentimental—especially in the matter of slander—at times it may be crude and narrow, as might be expected from the rude ages in which it sprung, but it was never so crude or narrow as to limit 'hospitality' to food and drink, as was argued by counsel in the recent slander action against Sir Algernon West. Even in the most materialistic view of hospitality, shelter seems the primary idea rather than food and drink. But it is the great merit of the English Common Law that, having its roots deep down in the national life, it grows with its growth and moulds itself to the fashions of each successive age; and in this matter of hospitality, as in others, the 'thoughts of men are widened with the process of the suns.' A cup of tea or a lobster sandwich—these are not what we really value now, but that

'Society, friendship and love
Divinely bestowed upon man'

of which the poet Cowper speaks. Others there are, with social ambitions, who would rank above even these charms of true hospitality the *cachet* which it gives them to be received in good houses or at Court functions; and, however hollow such hospitality may sometimes be, it cannot be denied that a slander which deprives these Society devotees of such entree is one which inflicts special damage of the cruellest kind, and gives exquisite pain. For we can none of us endure long the disapprobation of the world, or ostracism from our own set.—*Ibid.*

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The Vexatious Litigant.—The Attorney-General appears to have a laudable desire to rid the law courts of the litigant cranks who recklessly and irresponsibly launch action after action for the sake of notoriety. The Vexatious Actions Act, 1896, arms the courts with powers against any one 'who has habitually

and persistently instituted vexatious legal proceedings without any reasonable ground for instituting such proceeding.' An order under the Act does not finally prevent the person enjoined taking further proceedings, but only requires that, as a preliminary, he or she must satisfy the court that there is a *prima facie* basis of action. Towards the end of the last sittings the Attorney-General obtained such an order against a gentleman who had instituted forty-six proceedings against a company, and thereby reduced the assets of his victim by one-half (*In the matter of Boaler.*) Last week he made a similar application to restrain the litigious exuberance of a lady who had brought a number of futile actions against various persons, and had not paid the costs awarded against her. (*In the matter of C. Ross.*) But this time he was not successful. The *Lord Chief Justice* declared that the case had not been sufficiently brought within the statute, which was to be put into force only in exceptional circumstances. At the same time, he warned the respondent that if she continued her vexatious ways an order would soon be justified, and the circumstances now disclosed to the courts would weigh against her. Our law is jealous of the rights of every person living in the kingdom to have redress for any injury, real or supposed, from the courts, and it is only when there is clear proof that the process of the law is being habitually abused that the liberty of the subject to issue a writ will be restricted. Poverty is no bar, nor is failure in previous actions itself a proof of their vexatiousness. And the *Lord Chief Justice* would not express any opinion on the question whether an order under the Act would prevent the institution of criminal proceedings. Thus limited, the Vexatious Actions Act cannot be made into a gagging instrument. It merely gives society that necessary protection against the habitual litigant which another recent Act, based on a similar principle, gives it against the habitual criminal.—*The Law Journal.*

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Sales in Market Overt.—MR. Justice *Scrutton's* lengthy and learned judgment last Tuesday, in *Cleyton* v. *Leroy*, will probably be reported, and form a valuable addition to our scanty modern lore on the question of what constitutes sale in a market overt. The decision is that an auction room in the City of

London, on the first floor of a building which presents the ordinary appearance of offices, is not a market overt. From the learned judge's examination of the authorities, he came to the conclusion that a sale of stolen property in the city, to give a good title to the buyer, must be in an open shop or space where goods of the kind are usually sold. This rule he deduced from the *Bishop of Worcester's case* decided about the end of the sixteenth century, saying that if he had to take notice of the custom of the city without evidence, he was not at liberty to speculate in what way modern developments are likely to have modified the old custom. Without going so far as to hold that an auction room could not be a shop, he held that the particular room where the sale had taken place was not one; if he had taken the contrary view, he would have been inclined, though, to hold that it was on open shop, because there was public notice by advertisements and placards that sales of certain kinds of goods took place there, and the public were admitted. In the old case on which the learned judge relied for proof of the custom, it seems to have been considered that the place must be such that passers-by can see that the sale is taking place. The ordinary shop in Elizabethan times was usually on open booth, every part of which was visible from the street; but in *Hargrave* v. *Spink* (1891)Mr. Justice *Wills*, after remarking that, structurally, shops are not now exactly what they were in the days of Good Queen Bess, suggested that the regular shop, to which any respectable person is admitted as a matter of course, answers the description of an open place. Mr. Justice *Scrutton*, in spite of what he said, seems to admit that the evolution of the shop has to this extent modified the custom.—*The Law Journal.*

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The Bars of England and France.—In the very interesting account which Mr. Underdown, K.C., gave in the Inner Temple Hall last Tuesday, of the celebrations which took place at Paris to commemorate the centenary of the Restoration of the French Bar to its privileges, he took occasion to remark upon the differences that exist between the order of barristers in England and in France. They have in common splendid traditions, a high code of honour among, and large powers of discipline over, their members, and striking record of men given to the service

of the State in its highest positions. Moreover, English and French barristers alike do not deal directly with their clients, but through the medium of another class of lawyers. In the scope of their work, however, and in their relation to the Bench, they are remarkably contrasted. The advocate in France only defends persons in criminal cases, only pleads the cause in civil cases, seldom appears in a commercial case or one between master and men, and very rarely becomes a judge. The prosecutor is a Government official, chosen from a different class, as is also the Judge; the advocate prepares the pleadings and conducts all the interlocutory proceedings, and a special class of practitioners appear in the commercial courts. It is the special characteristic and the peculiar excellence of the English legal system that the barrister acts as both prosecutor and defender; that he is concerned with the case from the moment it becomes an action; that he practises in every kind of court and in every department of law; and that finally the paid judiciary is chosen exclusively from his ranks. To this largeness of function and to this close inter-connection between Bar and Bench we owe it that our Judges represent the best trained intellect in the country, and command the fullest respect of the whole people. For they are the men picked for their ability and their eminence by the most searching competition. Yet, proud as we are of our Bar and our Bench, there are one or two points in the French system which are suggestive, and may be worthy of imitation. The advocate in France, before he is admitted to the Bar, must have spent three years of study in a law school, followed by three years of probation and constant attendance at the courts. Again, in France, not only are there local courts of first instance with full civil jurisdiction, but local courts of appeal, and correspondingly local bars with their separate organisation. In the raising of the standard of legal education, and in the decentralisation of our courts, we have something to learn from our neighbours.—*The Law Journal.*

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Mr. Justice Grantham—who is now entering upon his twenty-sixth year of judicial life—will, before he is many months older (says the *Daily Telegraph*), have rivalled the great performance of *Bayley* J., who retired from the Bench in 1834, after adorning it since 1808. Bayley, J., was famous for his learning

and his rapid apprehension. His easy ways called forth from a French jurist the compliment, 'Ils' amuse a juger.' Seven little red books containing a note of all reported cases were his constant companions. But while no modern judge of first instance has served for more than twenty-six years, several judicial personages have had a longer total period to their credit. Lord Esher, M.R., was a Judge, a Lord Justice, and Master of the Rolls between 1868 and 1897. Lord Lindley was a Judge, Lord Justice, Master of the Rolls, and a Lord of Appeal in Ordinary between 1875 and 1905. And the career of Lord Morris stretched from 1867 to 1900.—*The Law Journal.*

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The Libel on the King.—Precedents are not wanting for prosecutions in defence of the King's honour, but the course which the proceedings took in *Rex.* v. *Mylius* on Wednesday is probably without precedent. In pursuance, ostensibly, of a political scheme for the extension of the "Republic," an attempt was made to 'cut away' the foundation of respect on which the Monarchy rests by an attack on the personal honour of King George. The plan of operations devised by one James, an American resident in Paris, engineered from that centre by the notorious Indian agitator, Krishnavarma, and carried out here by the defendant Mylius, was based on the idea that the destruction of the Monarchy could be carried out by a series of scurrilous attacks on its representatives. The confederates in this scheme calculated on being allowed to pursue their campaign of slander with impunity, extending it gradually from the officers of the army and navy, with whom they commenced, to other circles. The conspiracy was nipped in the bud by the bold action of the King, who disdained, however, to treat the offence as political, but stepped out in his own person to defend the honour of the Monarchy. No attempt was made to prove the gross libels which had been disseminated, but the prosecution took upon itself the burden of disproving them, as it did to the very hilt. There was, indeed, no difference, and the only point which the defendant urged—beyond his grievance at the non-appearance of the King in person to give evidence—was that he was being dealt with as a common libeller, instead of being charged with sedition or some other form of political offence. Logically and technically.

there may have been something in the objection to a proceeding by way of criminal information *ex officio*—which Starkie admitted to be 'irreconcilable with the ordinary principles of jurisprudence on which the law of libel in England is founded'—on a mere charge of defamation. But even to the famous Vallambrosa case (*The Queen* v. *Labouchere*, 1884), which drew the line against criminal information as strictly as possible, the court based itself on Blackstone's dictum that such information should still be allowed on the complaint even of private subjects 'for any gross and notorious libels and other immoralities of an atrocious kind . . . . which, on account of their magnitude or pernicious example, deserve the most public animadversion.' Such an offence it was of which Mylius has been found guilty, and his complaint against the form of the proceedings will bring him no man's sympathy, seeing that large public interests were involved in the vindication of the King's honour, against which he had no word to say when the opportunity was given to him to prove the truth of the libels which he had circulated.—*The Law Journal.*

THE KING AS WITNESS.

From the legal point of view, the most interesting feature of the case was that which, though referred to incidentally in the course of the proceedings was never ruled on, came as a dramatic climax after the delivery of the verdict and judgment—the declaration that the King, though willing, was incompetent as a witness. The Attorney-General had already stated with much emphasis in his opening speech that the King was under this disability, and disadvantage too, in the prosecution of his complaint, but he held the incapacity to be so absolute that it could not be waived, public policy, and not private privilege, being the ground. The defendant's protests against the absence of his prosecutor were, of course, futile, because the falsity of his charges was proved to demonstration without the King's evidence and it is true, as Sir Rufus Isaacs said, that there is no precedent for calling the King into the witness box to testify. But does the formal declaration of incompetency under the King's own hand based on the opinion of Law Officers of the Crown create a new precedent? Authorities can be found for the view which the Law Officers have adopted, but the weight of opinion has hitherto

been the other way, and the decision now taken, though not confirmed by the Court—the Lord Chief Justice indeed seems to have been careful to guard himself from the expression of any decided opinion—is really of great consititutional importance. The matter was discussed in the *Earl of Bristol's case* (1626), where the Earl, who had been impeached, wished to call the King as a witness to conversation which passed between them before the King's accession. Lord Keeper Coventry was of opinion that the Sovereign could not be examined in any judicial proceeding because his evidence would be 'without temporal sanction.' The judges were consulted on the two points (*a*) whether the King's testimony in cases of treason or felony was to be admitted; and (*b*) whether words spoken to the Prince, who is afterwards King, made any difference; but before they had given their opinions they were informed by the King, through the Attorney-General, that 'not being able to discern the consequences which might happen to the prejudice of the Crown from these general questions his pleasure was that they should forbear to give an answer thereto.' Just a century ago the question arose again in connection with the *Berkeley Peerage case* (1781) where it was proposed to call the Prince Regent as a witness. Lord Campbell states in his 'Lives of the Chancellors' (Vol. II., 511), that the general opinion was that he might have been examined on oath, and he declared in round terms that the Sovereign might, if he so pleased, testify as a witness in any case, civil or criminal, though there would be no temporal sanction to his evidence. This has ever since been the accepted view of the leading writers on evidence, and Mr. Robertson in his recent work on 'Civil Proceedings by and against the Crown,' points out, as Best had done before him, the illogical character of Lord Keeper Coventry's objection on the ground of want of temporal sanction. Hitherto there has been nothing in the authorities to show that the court ought not to accept the personal evidence of the Sovereign voluntarily tendered in the witness-box, even without any temporal sanction attaching to it. Having regard to the great disadvantages which might arise from the definite acceptance of such a rule, we are not sorry that the court has not been called on to decide the question, though the precedent created by the course taken in the Mylius case will add not a little to the difficulty of coming

to a right conclusion whenever the question does come up for settlement.—*The Law Journal.*

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Judges taking down evidence with their own hands:—SIR EDWARD CLARKE spoke at the Bar meeting of the absurd practice of judges taking down with their own hands the evidence given before them. The practice (says the *Globe*) does not prevail in the Divorce Court; there an official shorthand writer takes down the evidence, and the Judge has a full opportunity of watching the demeanour of the witnesses. Nor is there any custom so 'absurd' north of the Tweed. Every Scottish judge has his own shorthand writer. There is another thing about the Scottish Judiciary which deserves to be mentioned. The Scottish Judges do not sit on Saturdays, and we have it on the authority of Lord Shaw that, delegating their clerical work, they accomplish more in five days than if they were improperly occupied for six.—*Ibid.*

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Calls to the Bar:—The following were among the gentlemen called to the Bar on January 27:—

LINCOLN'S INN.—H. P. Dastur (Certificate of Honour C.L.E., Hilary, 1911); I. I. Kazi; M. K. Azad; N. Chand, S. C. Mitra; M. R. N. Aiyangar; M. Po-han; J. L. Lalvani; M. L. Lalvani; P. S. Shahani; G. K. Narayan.

INNER TEMPLE.—S. J. Shapoorjee; R. S. Bilimoria, M.A,. L.L.B., Bombay.

MIDDLE TEMPLE.—K. J. Rustomji (Certificate of Honour C. L. E., Hilary, 1911): Mya Bu; Syed Abdul Aziz; Syed Zair Hussain; Chit Hla; A. H. Wadia, M. A., Bombay University, Y. G. Gokhale; Ba On.

GRAY'S INN.—D. P. Arseculeratne, Colombo; Sirdar Nihal Singh, B.A.; G. J. Israni; J. J. Mifsud; Sankar Lal; Sheikh Mukhtar Ahmed.

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Prohibition against Standing in the Gangways.—Mr. Justice Pickford has taken a step which will have the approval of those who are professionally engaged in the courts. He has caused to be posted on the doors leading into his court the following notice: "No one is allowed to stand in

the gangways.' It has, says the *Daily Telegraph*, been a source of discomfort and inconvenience to those having business in the courts to find very frequently on passing through the doorways that the gangways on either side were blocked with people whose presence was merely dictated by curiosity. The nuisance has been especially obtrusive, when cases of great public interest have been in progress. As we pointed out a few days ago when referring to Lord Welby's complaint as to the accomodation provided for witnesses, the body of each court is primarily intended for those who have business there—counsel, solicitors, jurors, witnesses, journalists—and that special provision is made for the public in galleries. This fact has, however, been constantly ignored, with the result that frequently the gangways are blocked, and those who must necessarily have to pass in and out of the courts meet with great, and sometimes wilful hindrance. So far as Mr. Justice Pickford's court is concerned, this is now a thing of the past. Other judges, notably Mr. Justice Darling, have occasionally expressed their dissatisfaction with the practise which prevails inasmuch as it is usually in the overcrowded gangways that those movements take place which disturb the questions of the courts and prevent counsel and witnesses being heard. In order to check this, Mr. Justice Darling ordered both doors leading into his court to be locked the other day while he was delivering a judgment.—*The Law Journal.*

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The following cases have been entered since the publication of the Hilary Cause List Supplement on January 7.

THE JUDICIAL COMMITTEE.

INDIAN APPEALS.

Srinivasa Moorthy *v.* Venkatavarada Iyengar and others (Madras).

Purna Sashi Bhattacharji and others *v.* Kalidhan Rai Chowdhuri and others (Bengal).

Bishum Chand Bachhaot *v.* Bijoy Singh Dudhuria (Bengal).

Musammat Durga Kunwar *v.* Musammat Mathura Kunwar and others (N. W. Prov., Allahabad.)

Bhagabati Barmanya (since deceased) and another *v.* Kali Charan Singh and another (Bengal).

Mussammat Hanif-un-nisa and another *v.* Chaudhrain Musammat Faiz-un-nsia, since deceased (now represented by Abdul Shakur Khan and another), and another (N. W. Pro., Allahabad).

Khunni Lal *v.* Kunwar Gobind Krishna Narin and another; Kanhaiya Lal and others *v.* Same ; Surnam Singh and others *v.* Same (Consolidated Appeals) (N. W. Pro., Allahabad).

Lingam Krishna Bhupati Devu Garu *v.* Sri Mirza Sri Pasupati Vijayarama Gajapatiraj Maharaja Manya Sultan Bahadur of Vizianagaram (Madaras).

Musammat Bhawani Kunwar *v.* Kunwar Himmat Bahadur and another (N. W. Pro., Allahabad).

Thakur Umrao Singh and another *v.* Thakur Lutchmun Singh and another (Oudh).

Maung Kyin and another *v.* Ma Shwe La and others (Lower Burma).

Raman Chetty *v.* Steel Brothers and Co. (Lim.) (Lower Burma).—*Ibid.*

The Code of Legal Ethics of the Bar Association of San Francisco.

[The Bar Association of San Francisco unanimously adopted the following code of ethics at a meeting held Oct. 13, 1910. The code is framed upon an entirely different plan from that of the American Bar Association Code, laying particular stress on the duty of the lawyer to devote every effort to remedying present defects in the administration of justice. The committee which reported the code consisted of Charles S. Wheeler (chairman), Warren Olney, Grover O'Conner, Charles A. Shurtleff and A. C. Freeman.—*Ed.*]

I. Distinctive Character of American Legal Ethics.

The Bar Association of San Francisco calls upon all licensed practitioners at the San Francisco Bar to bear in mind that the profession of the law, for more than two thousand years, has been recognized as essential to the social concept which is the basis of American civilization; that the ideals of the profession call not only for ability, learning, humanity and probity, but for a highminded and unselfish obedience to the ethical truth that the lawyer, as an officer of the court, is obligated to aid in, and not to hamper or thwart, the administration of justice,

They are also called upon to remember that their profession is incorporated into, and dignified by, the organic acts of the state and the nation; that the bar is charged with the high duty of supplying from its limited ranks the Judicial Department of Government, the supreme importance of which department is emphasized in the circumstance that the people have delegated to it the power to adjudge null and void the acts of the two remaining departments.

The bar is admonished that an incompetent, cowardly or dishonest judiciary would, if persisted in, lead to the overthrow of American institutions; and that a competent, courageous and honest judiciary cannot be looked for if the bar itself is incompetent, cowardly, dishonest or careless of the obligations resting upon it as a collective body.

The profession should also bear in mind that the lawyer, in addition to his distinct functions in reference to the judicial branch of the Government, has always been given much prominence in the legislative and executive departments; that in the legislative department members of the profession have usually, if not invariably, outnumbered the legislators elected from any other single walk in life, while the chief executives of the state and the nation have, in most instances, been members of the bar.

The foregoing considerations, to which many of a kindred nature might be added, emphasize the vital nature of the relation of the bar to American institutions, and point to the supreme truth that American patriotism is the keystone of American Legal Ethics.

II. *Lawyers' Obligations to the Professional Body.*

To the end that the duties which rest upon the bar as a professional body may be performed, each lawyer is in honor obligated to devote to the common cause a fair proportion of his time and labor.

III. *Organized Effort Essential.*

Since it is obvious that the work of the bar cannot be effectually accomplished without organized effort, it follows that a local Bar Association should embrace in its membership each and every reputable member of the bar. The refusal of a member of the bar so to identify himself with the body of his

profession at his earliest opportunity is a flagrant disregard of professional duty.

Each member of the bar is morally bound to perform fairly and thoroughly the work assigned to him by the organized bar.

Duties of an inquisitorial or disciplinary character demand not only fairness and impartiality, but the highest degree of moral courage, unselfishness and backbone. Boards and committees called upon to discharge such duties are, in an important sense, the custodians of the reputation and dignity of the bar. Shirking of duty on such committees is reprehensible and unprofessional in a high degree.

IV. *Duty to Maintain High Standard in Personnel of Bench and Bar.*

It is the duty of the united bar to exert its influence and efforts to the end that those only who are honest, intelligent and adequately prepared shall be admitted to the bar; that those only who maintain their integrity of character shall be permitted to remain there; that those only who are in every way fitted shall be elevated to the bench, and that those only whose honesty, industry, affiliations, associations and habits continue to maintain the people's faith in and respect for the law shall be permitted to remain on the bench.

V. *Non-Partisanship in Regard to the Bench.*

It is the duty of the bar to endeavour to prevent political considerations from outweighing judicial fitness in the selection of judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench. The united bar should likewise strive for retention in office of competent judges, irrespective of their party affiliations, and should exert its influence for the removal of the judiciary from the domain of partisan politics.

VI. *Attitude of the Bar Toward the Bench.*

The lawyer must bear in mind that his duty to maintain toward the courts a respectful attitude does not spring from his personal regard for the incumbent of the judicial office, but from the fact that it is of supreme importance that the diginity of the office shall be maintained. Bad opinion of the incumbent, however well-founded, cannot excuse a failure to exhibit the respect due to the judicial office.

Judges are entitled to receive the support of the Bar as a professional body against unjust criticism and clamor.

Where there is a proper ground for serious complaint against a judicial officer, it is the right and duty of the lawyer to submit his grievance to the proper authorities. In such cases, but not otherwise, such charges should be encouraged, and the person making them should be upheld and protected by his professinal brethren.

Lawyers are admonished to bear in mind that one side or the other must prevail in each of the several stages of a court proceeding, and that it is highly unprofessional to display temper either in court or out because of an adverse ruling or decision.

It is reprehensible and highly unprofessional for a lawyer to communicate or argue privately with a judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a judge special consideration or personal privilege or favor.

VII. *Relations of Bench and Bar.*

Mutual respect, induced by highminded independence in the discharge of judicial and professional duty, is a proper foundation for cordial personal and official relations between Bench and Bar.

A judge's personal and political friends who practise before him, owe it to him, to the bar and to the public to be scrupulously careful to avoid any appearance, act or conduct susceptible of misconstruction.

VIII. *Profession Responsible for the Progress and Adequacy of the Law.*

Law is a progressive science, and it is the duty of the bar to do its utmost to keep it abreast of the needs of the times. To that end the Bar should exert itself to bring about the abolition of any rules of law or practice, however firmly grounded in precedent, that may appear to have become unsuited to present conditions. Particularly should the bar strive for the abolition of any statutory or judicial doctrine not consonant with justice and equity.

IX. *Profession Responsible for the Law's Delays.*

The bar admits its full responsibility for such of the law's delays as are not inherently necessary under our system of government. This bar recognizes that it is an immediate and continuing duty on the part of the profession, on the bench and the bar, to remedy the present tardy methods of conducting legal controversies. To that end the members of the bar are admonished that code provisions and rules of court regulating pleadings, practice and procedure are intended to facilitate and speed the administration of justice. Those in existence are recognised by the bar as adaptable to that purpose if their spirit is insisted upon and obeyed by both bench and bar.

To the same end, the Association declares it to be not professional for a lawyer to take advantage of any imperfections in the machinery of the law, with the intent thereby to retard, delay or restrict the speedy trial and conclusion of civil and criminal actions and proceedings, or the hearing of any demurrer, motion or matter therein requiring a hearing.

It is not professional to interpose demurrers for the purpose of securing delay, nor to carp at trivial defects in a pleading not going to the merits; nor to move to strike out parts of a pleading where no useful purpose will be subserved thereby; nor to obtain by stipulation or by order more time to plead than is reasonably and fairly necessary; nor to neglect to demand a jury trial where the purpose of the demand is to delay the cause; nor to move or request a court to grant a continuance of a cause on statutory grounds without making a strictly legal showing, or upon any other grounds without making or causing to be made to the court and opposing counsel a full, truthful and unexaggerated statement of the reason therefor; nor to refrain from notifying the court and opposing counsel, as far in advance of the time set for trial as the circumstances of the case will admit, of an intent to move for a continuance; nor to move for a change of venue or to make any other motion in an action or proceeding, merely to vex, harass or annoy the opposite party, or to put him to needless expense; nor to make use of the delays necessary or possible in the law for the purpose of wearing out an antagonist or forcing him to a compromise.

It is the duty of the bench and bar to be punctual in attendance upon court.

It is the lawyer's duty, in the trial of causes, to expedite the work of the court by admitting the truth of all matters which he knows to be true, and not to consume its time by requiring proof, in the hope of discovering and obtaining advantage from technical defects in an opponent's preparation or procedure.

The lawyer is ethically obligated, not only to his clients, but also to the bar, to take upon himself no more business than he can properly and speedily dispatch. While reasonable courtesies in the matter of continuances are essential in the experience of every lawyer, it is inethical to expect, or to seek to obtain, postponements or delays in the trial of causes which are either unreasonable in number or duration, or which are not absolutely necessary.

X. *Responsibility of Bar Relative to the Jury System.*

The bar must hold its own apathy largely responsible for the disrespect into which the jury system has fallen. In all cases a lawyer is responsible to his professional brethren for his own conduct and the conduct of his employees in relation to the jury. Existing conditions demand that he also be held *prima facie* responsible for any misconduct in the same regard by his client or his client's employees. To that end it is declared that henceforth the lawyer representing the side employing improper means with a jury is presumed to be the responsible source of such scandal, and where such improper conduct is shown to have been employed, it is essential to the professional standing of the lawyer representing the side involved that he exonerate himself before the organised bar from complicity in it or connivance at it.

All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the court out of the jury's hearing.

A lawyer must never converse privately with jurors, and both before and during the trial he should avoid communicating with them even as to matters foreign to the cause.

It is not professional for a lawyer to offer evidence which he knows the court should reject in order, under the guise of arguing its admissibility, to get the same before the jury, nor should a lawyer address to the judge arguments or statements known to be foreign to the issue.

It is particularly reprehensible to introduce into an argument addressed to the court remarks or statements intended to influence the jury or prospective jurors in the cause.

It is disreputable and unprofessional to make, in an opening statement to the jury, or in an offer to prove, assertions which a lawyer knows he cannot or will not be permitted to prove.

A too narrow application of existing rules operates to relieve a large part of the most intelligent portion of the community from jury duty. The obligation rests upon the bar to strive for greater liberality in these rules to the end that juries may possess the intelligence essential to true fair-mindedness.

The members of the bar who make up the judiciary are respectfully admonished that it is the consensus of opinion of this Association that the latitude often permitted counsel conducting jury trials, particularly in criminal cases, tends to confuse the issue, to improperly bias the jury and to defeat the ends of justice; and it is the intent of this code respectfully to remind the bench that it is the duty of the courts, in their ethical relations to the bar, to hold all counsel strictly and impartially to the issues involved, in criminal and civil jury trials, and to enforce their orders and admonitions given to that end with all of the powers at their command.

XI. *The Conduct of Criminal Cases.*

The Association takes notice of the opinion expressed by the Chief Executive of the nation—himself a distinguished lawyer and judge—that the administration of the criminal law is a disgrace to our institutions. It further recognizes that the remedy lies to a large extent in the domain of legal ethics. It therefore lays down the following canons which should be obvious but which it believes have been generally disregarded in the trial of criminal causes :—

The lawyer's right and obligation to defend persons charged with crime carries with it no duty and no right to prostitute either the letter or the spirt of law.

The lawyer's primary obligation, as an officer of the court, to assist in the administration of justice, is neither abrogated nor diminished by his appointment or retainer to defend a person charged with crime.

A lawyer who invents or manufactures defences for prisoners or who procures their acquittal by the practice of any manner of deceit, cajolery, wilful distortion or misrepresentation of facts, or any other means not within the spirit as well as the letter of the law, is to be reckoned as an enemy to society more dangerous than the criminal himself; while successes at the bar won by such methods can never be the basis of desirable professional reputations, but, on the contrary, are badges of infamy.

Whenever an attorney's professional obligation compels him to bring about the acquittal of a person charged with crime through the advancement of a legal proposition foreign to the guilt or innocence of the accused, his success is to be regarded both by him and by his professional brethren rather as the culmination of a regrettable duty than as a professional triumph.

Lawyers representing the people in public prosecutions should use every proper means to lay before the jury the cause of the people, and should strive to prevent miscarriages of justice through the exercise by persons accused of crime, or those acting in their behalf, of any improper or corrupt means.

In the criminal law it must be remembered that the people rightfully demand, and are entitled to, not only the conviction of the guilty but the acquittal of the innocent as well.

To the extent of a full recognition, of the foregoing principles, the feelings of the attorney charged with the prosecution or with the defence may properly enter into his client's cause, but beyond this he should avoid bringing his personality or his personal feelings or beliefs into a criminal cause.

XII. *Paramount Ethical Obligation.*

As a final and emphatic canon in this, its Code of Ethics, the Bar Association of San Francisco admonishes the profession that its members are officers of the court charged with the high duty of aiding in the administration of justic, and that this duty enters into, and must be recognized as, the dominant factor in the

interpretation of any obligation resting upon the lawyer to further the interests of his clients or to maintain successfully their causes. —*The Green Bag.*

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The Duties of a Chairman.

BY FRED R. BARLEE.

Do you, my *Green Bag* readers, know
The duties of "The Chair?"
He that presides must ever be
Discreet, unabiased, fair.
The whole Assembly's *prompt support*
He properly *may claim,*
Provided he's to each and all
Impartially the same
"*His ordinary functions*" (he
Must ever bear in mind,
"*Are ministerial alone*"
(By Palgrave, Kt., defined).
He does not as a member speak
Like any other there,
His words are only to explain
His conduct, or to air
His views *as chairman*; he *should not*
Attempt to say at all
The wish or *the decision* of
Those present in the hall.
If *motion or amendments made*
(In order *scilicet*),
Duly proposed and seconded,
All doubts at rest are set
By this clear rule, *The question must*
Be from the Chair proposed
At once (*scil* after it's discussed).
No option is reposed
In chairmen, *though the motion put,*
One may distinctly see,
Shows, to the meeting's purposes,
Direct hostility;
E'en though if carried, the debate
It would abruptly end

By forcing him to leave the chair,
And to an *impasse* tend.
Let these few rules your conduct guide,
And ever bear in mind
(No doubt superfluous advice),
Be courteous, firm but kind.—*The Green Bag.*

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Deadly Repartee.—SIR EDWARD CARSON, K.C., an Irishman, is one of the wits of the English bar, and a skilful and deadly cross-examiner. He recently began his cross-examination of an offensive witness thus:—

Carson.—"I believe you are a heavy drinker?"

Witness.—"That's *my* business!"

Carson (without a moment's hesitation).—"Have you any other?"

It is needless to say that the promptness of the question, and the laughter which followed, put the witness completely at counsel's mercy.—*Ibid.*

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The Longest Lease.—IT not infrequently happens in Europe that there is some bar to the actual sale of a piece of property—though the title of the owner is perfectly good, the title itself may contain a sale-restraining clause. In such instances, it is the custom to grant a lease for a long period, say for nine hundred and ninety nine years. Most persons are just as well satisfied to be in possession for nine hundred and ninety-nine years as for ever.

One of the longest leases known to exist was granted for a small section of meadow land, comprising some sixteen acres, situated in Surrey, England. This lease was granted on St. Michael's Day, 1651, ard is for the term of twenty-nine hundred years. The rental was fixed at a "red rose when demanded." Why this odd stipulation is not known, as there is nothing about the land in question to suggest it, no roses growing or having ever grown, so far as is known, on the sixteen acres.

The present holder of the lease may remain in undisturbed possession for some time yet, as his tenure does not expire until the somewhat distant year 4551.—*Ibid.*

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An Indiscretion—ONE Star in an early day was one of the great lawyers at the bar, but he had one failing—he did drink. One morning he appeared before the Supreme Court while motions and oral arguments were being heard, and got up and said to the court then in session:—

"I have only one case in your court. My client is poor, and I need fees which are not forthcoming. I wish this case could be decided at once, and I will give the court five dollars if I can get a decision now."

The Chief Justice rapped for order and replied that they could not entertain such a proposition. The attorney got up again and thought he would fix it up.

"Your honors, I did not mean five dollars for all of you, I meant five dollars apiece." Then the attorney was led out by a brother lawyer while court and audience broke out in roars of of laughter.—*The Green Bag.*

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Getting Started.—Young Doctor.—"Well, old chap, at last I have a case; and he has lots of money, too."

Young Lawyer.—"All right, Doc; when you get him to the point where he wants a will drawn up, why just 'phone over. He may be the means of getting us both started."—*Ibid.*

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Useless but Entertaining.—A certain jurist was an enthusiastic golfer. Once he had occasion to interrogate, in a criminal suit, a boy witness from Bala.

"Now, my lad," he said, "are you acquainted with the nature and significance of an oath?"

The boy, raising his brows in surprise, answered:—

"Of course I am, sir. Don't I caddy for you at the Country Club?"—*Ibid.*

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Heard in the Superior Court of Cook County—The jury, after having been out for some time, appeared before the Court and asked for further instruction.

Court—"On what subject do you need enlightenment?"

Juryman—"We desire to know who the plaintiff is."—*Ibid.*

Hints to Lawyers.—Address by Justice Davar:—An address entitled "Hints to Young Lawyers" was delivered by the Hon. Mr. Justice D. D. Davar, at the Elphinstone College, Bombay, on Wednesday last. Justice Davar said:—To most young students who, on finishing their school career, have to decide what career in life they should adopt, the legal profession has a wonderful fascination. They think that success in the profession is easy of attainment to a man who is capable of talking long and talking fluently and is gifted with a certain amount of assurance. Most students in their innocence think that sucessful practice of the legal profession consists in making eloquent speeches, bullying ignorant or innocent witnesses and occasionally making impudent attacks on their opponents and sometimes making jocular remarks. I assure you, my young friends, that this is wholly a false ideal. In order to be successful as lawyers, the first essential is that you should be most devoted students of the law. You never can work too hard or too assiduously during the period you are studying law. To students of law, my most earnest advice is that you should devote yourself heart and soul to your studies alone. Leave other matters for the future. Problems of social reforms or political progress are not for you at present to grapple with or meddle in. Leave those to your fathers and grandfathers and wait till you have attained maturer age and achieved success in your profession before you touch anything else. Your one object in life should be to follow your studies closely or devote your whole attention to them. Try to excel in all you do. Your ambition ought to be to make a creditable appearance in the tests provided—be they prize examinations of the school itself or other examinations which qualify you for practice at the Bar. Here let me tell you one thing. Do not be dejected or down-hearted, if perchance in spite of hard work you fail in your examinations. In life, failures must come to some of you sometimes. Regard them as incidents which tend to make you more fit for the future. Anyhow be sure that no one will regard your failure in an examination as any indication of your incompetence. I know of three of my very best students failing, two of them more than once, in their examinations. Let me tell you in confidence that in my opinion those students knew more law than some of their examiners and

yet they failed. Examinations are not infallible tests of a student's competence. For want of anything better I suppose this method of making lawyers will continue, but let me repeat, do not let failure lead you to despair. If you fail, re-double your efforts and face the incident with cheerfulness and hope, and be sure success will eventually be yours.

ABSENCE OF WORK.

I have hitherto spoken to you as students of law. I will now assume that you have passed your examination and become qualified lawyers with permission to practise the profession. The position, sooner or later, most, if not all of you, will attain, and then the real troubles of life will begin. Do not deceive yourselves with the idea that when you pass your examination, the worst is over. As you progress in life and get into work, the worries and anxieties attendant on the work of a conscientious lawyer will begin to be felt by you, and you will look back to your student days as those of comparative ease and comfort. The first thing that will worry you will be, the absence of any work for you to do.

The first care of a young pleader should be to select the district for his practice, and my advice to you is to select the district, the language of which is your mother tongue. It may be that you may have a long time to wait before work comes to you, but take my word for it, if you are worth your salt work will come to you. Every young man has, sooner or later, his opportunities, and your eventual success or failure wiil depend on what use you make of those opportunities. Make the very best use of your time while you are waiting for work to come. Do not discontinue your studies because you have passed your examination. Attend courts with regularity and follow the conduct of cases by capable counsel or pleaders. When conducting your cases my advice to you is, do not under any circumstances be ambitious and try to distinguish yourself. Don't resort to efforts at eloquence or wild declamation. The profession of law is highly a matter of fact one and does not give much scope for high flown eloquence or heavy declamation, more especially in the case of young practitioners. Try and do your work with modesty but at the same time with thoroughness and care.

Next, you must know how to treat your opponents at the Bar. Let me assure you that it is the worst mistake you could possibly make to treat your professional brethren on the other side with rudeness, or discourtesy. You must remember that while you are doing your duty towards your client, your opponent is also doing his duty towards his cilent. The next thing to study with great care and much attention is your conduct in court towards the Bench.

ATTITUDE TO THE BENCH.

If, when you are conducting a case, you find that the judge is taking a view adverse to your case and if you feel that he is wrong and you are right, do not be daunted by the first impressions on the judge's mind. Preserve an even temper and a respectful attitude but at the same time go on firmly and persistently; do not swerve from the straight path.

Learn always to take your success as well as your failures with equanimity. One side must lose a case, and it must, in the ordinary course, be often your lot to lose cases. Do not lose your temper and go out and abuse the judge. If you think the judge is wrong, it is your duty to advise your client to take his case to a higher court, but do not give vent to your spite on the judge and call him names. You must know that there are possibilities of your appreciation of your case being after all wrong. The Judge has done his duty, and if you feel that you have done the best you could for your client, you must rest content with the satisfaction of having done your duty.—*Times of India.*

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Mr. Justice Grantham's Apologia.—The unprecedented character of Mr. Justice Grantham's address to the Grand Jury and members of the Bar assembled at the Liverpool Assizes, is only to be accounted for by an exceptional state of circumstances putting the learned judge on his defence. There is no occupant of the Bench, as we took occasion to remark on the completion of his twenty-fifth year of judicial service, for whom the Bar entertains a more kindly feeling. The impulsiveness, which has, now and again, made him overstep the lines of judicial utterance, has not lowered his position in the general esteem; for the Bar dearly loves a fighter—even among the Judges. 'I was

brought up,' says the Father of the Bench, 'to fear nothing and to do my duty irrespective of consequence.' No one who values the independence of the Bench will challenge the judge's right to act on those principles. Nor will any one deny his claim that he has never, *wittingly*, done or said anything to give a partisan or political complexion to his judicial work. But in his further claims to interest himself in the general welfare of the country and to express particular views as to the political life on which that welfare depends, he has laid out for himself rather a difficult task as a judge; and it would have been better if the learned judge's intention to postpone the reply to his critics till his retirement from the Bench had been adhered to. The fact that it has now been made may be taken as some indication that that retirement is still—shall we say happily?—far off.—*The Law Journal.*

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Mr. Justice Grantham and Politics.—Mr. Asquith, in reply to a question by Mr. Morrell, in the House of Commons, said:

I have read the report of what Mr. Justice Grantham said at Liverpool yesterday. This House is ever scrupulous to discourage anything in the nature of censure, or even of comment, within these walls, on the sayings and doings of His Majesty's Judges, But there is a reciprocal obligation on the part of Judges not to take advantage of the immunity of their judicial position to reflect on the proceedings of this House or its members. That obligation, usually so loyally recognized on the Bench, appears on that occasion to have been signally violated. While I should, as at present advised, deprecate the matter being treated as one of privilege, I would ask the House to allow His Majesty's Government time to consider the best way of dealing with what is happily a unique situation.—*The Law Journal.*

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Delay on Circuit.—'The ideal we must all have in mind as members of the Bar and as members of the public,' said Sir Rufus Isaacs at the Bar meeting the other day, 'is that there should be such a state of things in the Courts that when a case is ready for trial there shall be a judge ready to try it.' It is an ideal which is more likely of realization at the Royal Courts of Justice than on circuit. The delay in the trial of criminal

cases at the Assizes, as shown by the latest volume of criminal statistics, is, as the late Mr. Justice Wright once called it, 'a scandal and a disgrace to the country.' As many as 489 accused persons tried at the Assizes in 1909 were kept in prison over two months before they were brought up for trial, 147 of them being detained between three and four months, and 79 for even a longer period. Even in the case of the guilty this delay is deplorable, for it not in frequently happens that the period of detention before conviction is longer than the sentence of imprisonment which is imposed. To the innocent it constitutes a grave injustice. Eighteen of the accused persons who were kept in prison more than four months were acquitted when at length they were brought up for trial. More than one judge has lately expressed his own satisfaction with the present circuit system. Is not the simple fact that eighteen innocent persons suffered imprisonment for more than four months in 1909 sufficient to prove that it stands in urgent need of reform? At the Central Criminal Court there were only four persons who were kept in gaol over eight weeks before they were tried. The explanation of the long detention of accused persons in the provinces is, of course, to be found in the long intervals between the Assizes: and the sooner some attempt is made to reduce these intervals, or to adopt Sir Harry Poland's proposal for the establishment in every county of a court analogous to the Central Criminal Court, the better it will be for the fair name of English justice.—*The Law Journal.*

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Damages for a Chance.—Marriage is often called a lottery. It has, undoubtedly, like a lottery, its prizes, and among the most dazzling, in feminine estimation, are peers and millionaires. It was the loss of the chance of such a prize, or of a theatrical engagement leading up to it, which formed the burden of Miss Eva Chaplin's recent complaint against Mr. Seymour Hicks in *Chaplin* v. *Hicks*. And, certainly, that clever manager had done his best to encourage roseate visions. So many lady members of his company, he said, had used the stage as a step to the peerage —only that season he had lost five to peers and millionaires — that the whole thing had become a 'tragedy,' and to supply their places he offered three-year engagements and stage training to

twelve popularly-selected beauties. The 'tragedy' of the thing was, of course, to himself—possibly the Peerage—not to the ladies. They were quite willing to take the risk of such a 'tragic' denouement to their stage career. No fewer than 6,000, in fact, including Miss Eva Chaplin, faced such a fate. The conditions were quite simple. All the aspirant had to do was to sign a form of application, and send in her photograph for publication in the *Daily Express*. This Miss Eva Chaplin duly did, and headed the beauty poll for her district ; but the notice to call on Mr Hicks for a personal interview only reached her on tour in Scotland, when it was too late to comply, and though she wired to Mr. Hicks he left her out of the competition. This was the grievance, and the question was what damages, if any, the disappointed fair one was entitled to. Actuaries do not shrink nowadays from valuing any probabilities—even the chance of an inconsolable widow marrying again. Seldom—very seldom—are claims in bankruptcy declared 'incapable of valuation' But juries are not actuaries. They can only do their honest best ; and in the case in question they fixed the solatium at £100. It seems rather a paltry sum for a 'favourite' with a peerage and millions in full view, but jurymen are, of course, prosaic persons. In Matthew Prior's poem, 'The Female Phaethon,' 'Miss Kitty, beautiful and young,' fired with her sister's successes, exclaims :

> 'I'll have my Earl as well as she,
> Or know the reason why !'

Miss Kitty "set the world on fire," but jurymen may possibly think that not all young ladies' forecasts of triumph are equally well founded.—*The Law Journal.*

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'Negligence' in English and Italian Law.—Several difficult questions were avoided in the case of *Rose-Troup* v. *The Sleeping Car Co., Ltd.*, which has occupied Mr. Justice Bucknill for several days, by the agreement of the judge and counsel that the English and the Italian Law of negligence were substantially the same. The case, which had been sent down for a new trial by the Court of Appeal, arose out of a claim for damages by an American lady residing in England, for injuries sustained in alighting from a sleeping-car of the defendants while travelling from Rome. The defendants being an English company, the

American lady was able to sue them here; but the main point at issue was whether by the Italian law, which governed the contract of carriage through Italy, the defendants or the Italian Railway Company, to whose train the car was attached, were liable for the accident. In an Italian case the Court of Cassation had held the railway company, and not the sleeping-car company, responsible for injury to a traveller caused by her falling through an open door while passing from the sleeping-car to the restaurant on the train. But Mr. Justice Bucknill distinguished that case from the one before him, because there the sleeping-car company was under no obligation to see to the door, while here their conductor was in charge of the plaintiff at the moment the accident happened. Foreign law is a matter of evidence which has to be left to the jury, but it is the function of the judge to determine what is the true state of the foreign law, and to declare it for their guidance. Having accordingly ruled that there was a primary liability on the defendants, the judge had then to instruct the jury on the plea of contributory negligence which had been raised. And here he found that the principles of the foreign law practically tallied with those of our own law of negligence. It has been held by our Courts that it is not contributory negligence on the part of a passenger not to look out when alighting from a train which has not stopped at the platform (*Glasscock* v. *London and Tilbury Railway Company*), and the principle of that decision was in point here. There are parts of the law of contract and tort where English and foreign systems widely diverge, but the law of negligence is based on common-sense, and common-sense is much the same all the world over. —*The Law Journal.*

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Notifications.

Civil Rules of Practice, Madras High Court.—Order.—No. 187, *Judicial, dated* 30*th January* 1911.—Under the provisions of Part X of the Code of Civil Procedure, 1908, and subject to the sanction of His Excellency the Governor in Council the High Court hereby makes the following amendment to Rule 192 (1) of the Civil Rules of Practice, 1905, viz :—

For the words "the amount of the decree" *substitute* "the amount for the realization of which the sale is held."

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CONTEMPORARY LEGAL LITERATURE.

Abraham Lincoln as a Lawyer.—The following is from an interesting article in the *American Law Review* about Abraham Lincoln as a lawyer:—"Lincoln was, upon the whole, the strongest jury lawyer in the State. He had the ability to perceive with almost intuitive quickness the decisive point in the case. In the examination and cross-examination of a witness he had no equal. He could compel a witness to tell the truth when he meant to lie, and if a witness lied he rarely escaped exposure under Lincoln's cross-examaination. He could make a jury laugh and often weep at his pleasure. His legal arguments were always clear, vigorous and logical, seeking to convince rather by the application of principle than by the citation of cases. A stranger going into court when he was trying a cause would, after a few moments, find himself on Lincoln's side and wishing him success. He seemed to magnetize every one. He was so straightforward, so direct, so candid, that every spectator was impressed with the idea that he was seeking only truth and justice. He excelled in the statement of his case. However complicated, he would disentangle it and present the real issue in so simple and clear a way that all could understand. Indeed, his statement often rendered argument unnecessary, and frequently the court would stop him and say: 'If that is the case, Brother Lincoln, we will hear the other side.' His illustrations were often quaint and homely, but always apt and clear and often decisive. He always met his opponent's case fairly and squarely, and never intentionally misstated law or evidence."

Another of his contemporary said about him:—"I enjoyed for over twenty years the personal friendship of Mr. Lincoln. We were admitted to the Bar about the same time and travelled for many years, what is known in Illinois, as the Eighth Judicial Circuit. In 1848, when I first went on the Bench, the circuit embraced fourteen counties, and Mr. Lincoln went with the court to every county. Railroads were not then in use, and our mode of travel was either on horseback or in buggies. Mr. Lincoln was transferred from the Bar of the circuit to the office of President of the United States, having been without official position since 1849 In all the elements that con-

stitute a great lawyer Mr. Lincoln had few equals. He was great both at *nisi prius* and before an appellate tribunal. He seized the strong points of a cause and presented them with clearness and great compactness. His mind was logical and direct, and he did not indulge in extraneous discussion. His power of comparison was large and he rarely failed in a legal discussion to use that mode of reasoning. The framework of his mental and moral being was honesty, and a wrong cause was poorly defended by him. In order to bring into full activity his great powers, it was necessary that he should be convinced of the right and justice of the matter which he advocated. When so convinced, whether the cause was great or small, he was usually successful. He hated wrong and oppression everywhere, and many a man whose fraudulent conduct was undergoing review in a court of justice has writhed under his terrible indignation and rebuke."

BOOK REVIEWS.

The Annual Digest. By JOHN MEWS. Published by Messrs Sweet and Maxwell, Ltd.; 3 Chancery Lane, W.C., London, 1910. Price 7s. 6d.—Mr. Mews' Digest requires no introduction to our readers. It is *the* digest of the English Case-law that every lawyer's library should contain. In the arrangement and get-up this Annual Volume for 1910 is quite up to the mark of its predecessors. The list of cases followed, etc., is separately printed on only one side of the paper so as to facilitate "noting—up." This is a new departure which will be found useful by the profession.

The Annual Statutes. By N. A. AGGS, M.A., L.L.M., *Barrister-at-Law*, of the Inner Temple. Published by Messrs. Sweet and Maxwell, Ltd, 3 Chancery Lane, 1910. Price 7s. 6d.

This volume contains twenty one Statutes of practical utility out of the thirty eight Statutes passed by Parliament in the year 1910. In addition to its being a collection of the important Statutes of the year it contains also appendices of Statutory regulations pertaining to the various enactments. The compiler, Mr. Aggs, has also given, in the shape of footnotes, the case-law bearing upon the wording of the enactment. There is also an Index given at the end of the book. The get-up is neat and leaves nothing to be desired.

Legal Proceedings in England, issued by Messrs. Rubinstein, Nash & Co., Solicitors of the Supreme Court, 5 & 6 Raymond Buildings, Gray's Inn, London. Published by Messrs. Sweet and Maxwell, Ltd., 3 Chancery Lane, W. C. London, 1910. —This is a short guide to Practice and Procedure in the English Courts together with the special Cypher Code devised by the publishers to facilitate communications with regard to pending proceedings and other matters that are most frequently the subject of enquiry. The first portion of the book gives a concise and general idea of the procedure in the High Court in England and the Cypher Code which follows is intended to facilitate and cheapen the cost of cable communications between solicitors in England and their over-sea correspondents. The book is a great desideratum and we are sure it will be of immense use to Indian clients and professional men having business before the Judicial Committee of the Privy Council.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

The Annual Digest of 1910 by J. Mews. Barrister-at-Law, Sweet & Maxwell, Limited, London.

The Annual Statutes of Practical Utility passed in 1910 by W. A. Aggs. M. A. LL. M. Sweet & Maxwell, Limited, London. Price 7*s*. 6*d*.

The Law of Sedition & Cognate Offences, by W. R. Donogh, M. A. Barristér-at-Law. Messrs. Thacker Spink & Co. Calcutta.

The Criminal Law Publisher by Venkat Rao of Cocanada.

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Calcutta Law Journal	Do.
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Law Students' Journal	Do
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The Lawyer	Do